

AMENDED IN ASSEMBLY JANUARY 24, 2012

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1225

**Introduced by Committee on Veterans Affairs (Cook (Chair),
Atkins, Block, Beth Gaines, V. Manuel Pérez, and Williams)**

February 18, 2011

An act to add Chapter 6 (commencing with Section 8122) to Part 1 of Division 8 of the Health and Safety Code, relating to cemeteries.

LEGISLATIVE COUNSEL'S DIGEST

AB 1225, as amended, Committee on Veterans Affairs. Cemeteries: veteran's commemorative property.

Existing law establishes the Cemetery and Funeral Bureau within the Department of Consumer Affairs.

Existing law prohibits a cemetery owned and operated by a city, county, or city and county from engaging in the business of selling monuments or markers, and also prohibits the cemetery's officers and employees who manage, operate, or otherwise maintain the cemetery on a day-to-day basis from engaging in the private business of selling monuments or markers.

This bill would prohibit the purchase, sale, or transfer of any veteran's commemorative property, as defined, except that the bill would authorize an unincorporated association and specified corporations that own or control a cemetery where veteran's commemorative property has been placed to any person or entity, except a municipal corporation, as specified, that owns or controls a cemetery where veteran's commemorative property has been placed from selling, trading, or

transferring veteran's commemorative property, except as provided. This bill would require any person or entity, except a municipal corporation, as specified, that owns or controls a cemetery where veteran's commemorative property has been placed that wishes to sell, trade, or transfer veteran's commemorative property to petition the bureau for permission to sell, trade, or transfer all or any part of the veteran's commemorative property. The bill would establish procedures for the bureau to grant this permission. The bill would make the violation of its provisions a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 6 (commencing with Section 8122) is
2 added to Part 1 of Division 8 of the Health and Safety Code, to
3 read:

4
5 CHAPTER 6. VETERAN'S COMMEMORATIVE PROPERTY

6
7 8122. For purposes of this chapter, the following definitions
8 shall apply:

9 (a) "Bureau" means the Cemetery and Funeral Bureau
10 established pursuant to Section ~~7602~~ 9603 of the Business and
11 Professions Code.

12 (b) "Veteran" means a living or deceased person who meets all
13 of the following conditions:

14 (1) Either served in the active military or naval service of the
15 United States during a war in which the United States was engaged,
16 or served in active duty in a force of any organized state militia,
17 not including the inactive National Guard and not including the
18 California National Guard when in an inactive, full-time status.

19 (2) Was released from the service otherwise than by
20 dishonorable discharge or was furloughed to the reserve.

(c) “Veteran’s commemorative property” means any monument, headstone, marker, memorial, plaque, statue, vase, urn, ~~decoration, flagholder, badge, or shield, item of memorabilia, or other embellishment~~ that meets all of the following conditions:

(1) Is over 50 years old.

(2) Identifies or commemorates any veteran or group of veterans, including, but not limited to, any veterans’ organization or any military unit, company, battalion, or division.

~~(3) Has been placed in any cemetery.~~

(3) *Is located in any cemetery.*

8123. (a) Except as provided in subdivision (b), ~~a person shall not purchase, sell, or transfer any person or entity that owns or controls a cemetery where any veteran’s commemorative property has been placed, including an unincorporated association, a cemetery corporation, or a religious corporation, and except a municipal corporation described in Section 8137, shall not sell, trade, or transfer~~ veteran’s commemorative property.

(b) ~~Any person, unincorporated association, cemetery corporation, or religious corporation, except a municipal corporation described in Section 8137, that owns or controls a cemetery where any veteran’s commemorative property has been placed may that wishes to sell, trade, or transfer~~ veteran’s commemorative property shall petition the bureau for permission to sell, trade, or transfer all or any part of the veteran’s commemorative property. The bureau may approve the sale, trade, or transfer of the veteran’s commemorative property under any of the following conditions:

(1) The veteran’s commemorative property is at reasonable risk of physically deteriorating so that it will become unrecognizable as identifying or commemorating the veteran or group of veterans originally identified or commemorated thereby and the veteran’s commemorative property that is to be sold, traded, or transferred is replaced at its original site by a fitting replacement commemorative property, monument, or marker that appropriately identifies and commemorates the veteran or group of veterans.

(2) The veteran’s commemorative property is proposed to be sold, traded, or transferred to a suitable person that will preserve the current condition of the veteran’s commemorative property and place the veteran’s commemorative property in a suitable place that will commemorate the veteran or group of veterans.

1 (3) The petitioner needs to sell, trade, or transfer the veteran's
2 commemorative property to ensure that sufficient funds are
3 available to suitably maintain the cemetery where the veteran's
4 commemorative property was placed, and the specific lot, plot,
5 grave, burial place, niche, crypt, or other place of interment of a
6 veteran or group of veterans, so that the place will retain the respect
7 that these hallowed places deserve.

8 (4) If the veteran's commemorative property to be sold, traded,
9 or transferred is reasonably known to the petitioner to have been
10 donated to the petitioner by any veterans' organization, the sale,
11 trade, or transfer shall have been consented to by that veterans'
12 organization.

13 (5) If the petitioner is not the owner of the veteran's
14 commemorative property that is to be sold, traded, or transferred,
15 the petitioner is authorized by the owner of the veteran's
16 commemorative property to engage in the sale, trade, or transfer.

17 (6) By operation of any other law authorizing the sale, trade, or
18 transfer of the veteran's commemorative property.

19 (c) A petition under subdivision (b) shall be delivered to the
20 bureau. Upon receipt of the petition, the bureau shall fix a date,
21 time, and place of the hearing. The date fixed for the hearing shall
22 be within a reasonable time, not to exceed 100 days, after the
23 petition is received.

24 (d) The petitioner shall serve notice of the hearing and a copy
25 of the petition upon the persons and entities mentioned in
26 paragraphs (1) to (6), inclusive, of subdivision (e) who could
27 reasonably be ascertained and contacted by the petitioner and upon
28 any other person as may be directed by the bureau. Service of the
29 notice of hearing and petition shall be made in a manner and by a
30 date as shall be specified by the bureau.

31 (e) At the hearing held pursuant to subdivision (c), the following
32 persons and entities, or their representatives, may be heard:

33 (1) The petitioner.

34 (2) Any person, other than the petitioner, who is the owner of
35 the veteran's commemorative property in question.

36 (3) Any veterans' organization that donated the veteran's
37 commemorative property in question to the petitioner.

38 (4) The family of each veteran at whose lot, plot, grave, burial
39 place, niche, crypt, or other place of interment the veteran's
40 commemorative property in question is or was placed.

1 (5) The Division of Veterans Services within the Department
2 of Veterans Affairs.

3 (6) The Department of Parks and Recreation.

4 (7) Any other member of the public who would like to offer
5 written or oral testimony.

6 (f) Testimony may be heard in person or by counsel or submitted
7 in writing.

8 (g) The bureau shall render its decision in writing, within 60
9 days of the hearing, and shall forward a copy of the decision to
10 each person who appeared at the hearing. An order or determination
11 of the bureau granting the petition, in whole or in part, may, at the
12 discretion of the bureau, specify the manner in which the petitioner
13 is to use or apply the proceeds of the sale, trade, or transfer. In
14 particular, but not by way of limitation, if the petitioner is an
15 unincorporated association or corporation that is subject to the
16 Nonprofit Corporation Law (Division 2 (commencing with Section
17 5000) of Title 1 of the Corporations Code), any order or
18 determination of the bureau granting the petition, in whole or in
19 part, may, at the discretion of the bureau, specify that the petitioner
20 deposit the proceeds of the sale, trade, or transfer in the permanent
21 maintenance fund maintained by the petitioner pursuant to the
22 Nonprofit Corporation Law.

23 (h) The bureau shall adopt any regulations regarding petitions,
24 hearings, and procedures under this section as may be appropriate
25 to further the purposes of this section.

26 (i) A person who violates any provision of this section is guilty
27 of a misdemeanor punishable by a fine of not less than one hundred
28 dollars (\$100) or more than one thousand dollars (\$1,000) or by
29 imprisonment in a county jail *for* not less than 10 days or more
30 than six months, or by both that fine and imprisonment; and in
31 addition is liable for all costs, expenses, and disbursements paid
32 or incurred by the person prosecuting the case.

33 SEC. 2. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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